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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,469	03/31/2004	Rafael A. Alvarado	Bet.PA.003	7995
7590	09/07/2005		EXAMINER	
G. Alan Witte Frost Bank Building Suite 920 6750 West Loop South Houston, TX 77401			PUROL, SARAH L	
		ART UNIT	PAPER NUMBER	3634
DATE MAILED: 09/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/814,469	ALVARADO, RAFAEL A.	
	Examiner	Art Unit	
	Sarah Purol	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 March 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/31/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____.

Claims 8,9,12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are considered indefinite in that the independent claims 1 and 11, on which they depend, do not positively claim the bags- merely a rack capable of holding bags.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, (8,9,12 –in so far as understood), 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nguyen 6,505,750. Note Figures 1 and 6. Note also the bags in Figure 9.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,4,5,6,11,13,14,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nguyen 6,505,750.

The hooks 12' do not teach a projecting leg at 45 degrees. The leg angles of hooks 12' are at 90 degrees. However, to form the legs at a 45 degree angle would have been a matter of choice in design for one having ordinary skill in the art at the time

of the invention. Nothing in the specification states why the 45 degree angle is necessary. Note that the first leg of 12' extends beyond the platform. To provide each side of the platform with hooks (all four sides and not just two sides) would have been a duplication of parts well within the ambit of one having ordinary skill in the art at the time of the invention for the purpose of holding more bags. The spacing of the hooks is considered to be a choice in design, obvious for one having ordinary skill in the art at the time of the invention.

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nguyen '750 in view of Smith 5,839,586. Nguyen teaches the device claimed absent a rotatable platform. Smith teaches a rotatable device wherein platforms 16 and 18 rotate about vertical members 26 or 24.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Similar bag holding racks are illustrated by Post 4,534,473; Requena 6,264,059; Tenser et al. 5,038,946; Rank 6,454,125.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol whose telephone number is 571-272-6834. The examiner can normally be reached on Mon. Tue. Thurs. For general questions relating to this application please e-mail the examiner at Sarah.Purol@USPTO.GOV.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sarah Purol
Primary Examiner
AU 3634